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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1083

ATLANTIC CITY ELECTRIC COMPANY, ET AL., *Appellants*,

v.

UNITED STATES OF AMERICA, ET AL., *Appellees*.

No. 1283

ALABAMA POWER COMPANY, ET AL., *Appellants*,

v.

UNITED STATES OF AMERICA, ET AL., *Appellees*.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MOTION OF ABERDEEN AND ROCKFISH RAILROAD COMPANY ET AL. TO AFFIRM

The Aberdeen and Rockfish Railroad Company, et al., appellees, respectfully move, pursuant to Rule 16(1)(c) of the Rules of this Court, that the judgments of the district courts in these cases be affirmed on the ground that the questions presented are so lacking in substance as not to warrant further briefing or oral argument.

STATEMENT

Between 1960 and 1967 there was no general increase in railroad freight rates. In the latter part of the period, however, wage and material prices began to rise steeply, and in 1967 the railroads found it necessary to make a general rate increase. In 1968 the Interstate Commerce Commission permitted this increase to go into effect. *Increased Freight Rates, 1967*, 332 I.C.C. 320 (1968) (Ex Parte No. 256). Even as the Commission proceeding in Ex Parte No. 256 was in progress, however, it was apparent that inflationary pressures were such that a further increase was necessary.

In March 1968 the railroads began the process of making further increases in their rates and in certain charges for special services. The railroads initiated proceedings before the Commission, known as Ex Parte No. 259, by filing a petition that principally sought relief from the regulations of the Commission, promulgated pursuant to Section 6 of the Interstate Commerce Act, prescribing the form of railroad tariff publications. As a general rule, rates are made by carriers simply by filing tariffs or tariff amendments. However, when an increase affecting every rate of every railroad is to be made, it is impracticable to comply with all technical tariff publication rules. The petition also requested modification, to the extent necessary to allow the increase, of outstanding Commission orders prescribing rate levels or maximum rates and relief, to the extent necessary, from the long-and-short-haul provision of Section 4 of the Act.

The ministerial relief from the tariff-publication rules was granted, and on March 11 a tariff was filed in-

creasing railroad freight rates generally by amounts varying by commodity and ranging from 3 to 10 percent. The Commission established an expeditious procedure, involving the submission of affidavits and written arguments for and against the increase and the hearing of oral argument. The expressions of views thus invited were designed to assist the Commission to determine how it should proceed further.

Shortly before the tariff containing the increases in rates and charges was to become effective the Commission, in the exercise of its power under Section 15(7) of the Act, suspended effectiveness of the tariff to the extent that rate increases exceeded 3 percent and instituted an investigation of the lawfulness of the increased rates. Hearings in the investigation were held between September 9 and October 8, 1968, and briefs were filed with the Commission.

On November 25, 1968, the Commission issued a report and order vacating its suspension of the rate increases except on a few commodities. 332 I.C.C. 590. On January 23, 1969, the Commission concluded the investigation by issuing its final report and order. It adopted the findings of its November 25 report, which included a finding that the railroad industry's return on investment in 1968 was 2.58 percent, characterized as "clearly inadequate," *id.* at 603, and, with a few exceptions, permitted the increased rates and charges to become effective. 332 I.C.C. 714. In the final order the Commission found, as it had previously, that the railroads had "a critical need" for additional revenues to offset, in part, increased operating costs. *Id.* at 790. It also found that the public interest and the national defense interest "in a sound, adequate, and efficient transportation system

will be adversely affected unless the proposed increased interstate freight rates and charges . . . are permitted to be continued or to be put into effect." *Ibid.*

The Commission further found that overall "the increased freight rates and charges authorized herein will not exceed a maximum reasonable level," and that the increases would "have no undue adverse effect on the movement of traffic by railway." *Id.* at 792. The Commission made clear, however, that its "findings as to justness and reasonableness . . . will apply to the general bases of rates and charges, and will not preclude interested parties from bringing any maladjustments to our attention for correction." Specifically, the Commission said that the increased rates were not to be "considered as prescribed within the meaning of the decision in *Arizona Grocery Co.* v. *Atchison, T. & S.F. Ry. Co.*, 284 U.S. 370," and would, "in all respects, be subject to complaint and investigation as provided by the act." *Ibid.* The order of suspension was vacated and the investigation proceeding was ordered discontinued. *Id.* at 793. The orders thus preserved fully the right of shippers to complain against and have the Commission pass upon the justness and reasonableness of any particular rates by which they might be affected.

In the two cases below shippers of coal, grain, chemicals and other commodities sought to have the Commission's orders set aside. These appellees, the Class I railroads of the United States, intervened. In both cases three-judge district courts, one in the District of Columbia and the other in the Southern District of New York, held that the Commission's general revenue orders, which did not determine the lawfulness of any

increased rate, could not be reviewed until after the appellants exhausted their administrative remedies by obtaining the Commission's determination of the lawfulness of particular rates by which they were affected. The courts' decisions followed precedent that dates back to 1935 and has been reaffirmed as recently as last month.

ARGUMENT

The issue here is not whether a shipper can have review of an Interstate Commerce Commission order approving or prescribing a rate for the carriage of freight that the shipper considers unreasonable. There is no doubt that such review is available. The issue is whether judicial proceedings can be instituted before such an order is entered, at a time when the Commission has merely found in a preliminary way that an overall increase in rates is not unreasonably large, but not that any particular rate as so increased is necessarily lawful.

The issue has long been regarded as settled and settled against the kind of premature judicial review attempted here: the Commission's general revenue orders, permitting railroads to increase their freight rates, are not reviewable at the instance of shippers who have not exhausted their administrative remedies with respect to the rates affecting them. A three-judge district court first so held in 1935, *Algoma Coal & Coke Co.* v. *United States*, 11 F. Supp. 487 (E.D. Va. 1935), and that holding has been repeated in subsequent decisions, most lately last month. The rule of those decisions is a recognition of the unique nature of the Commission's general revenue proceedings. It has not been affected by the abrogation of the negative

order doctrine, *Rochester Tel. Corp.* v. *United States*, 307 U.S. 125 (1939), or the enactment of the Administrative Procedure Act, liberalizing reviewability.

The decision of this Court in *City of Chicago* v. *United States*, 396 U.S. 162 (1969), emphasized by the appellants, does not justify overturning the rule that has been applied by the courts for 35 years. In that case the Court held that an ICC order is not unreviewable merely because it is permissive. The position of these appellees is not that the orders of the Commission here involved are unreviewable merely because they are permissive but rather that because the orders do not determine the lawfulness of particular rates a shipper may properly be remitted to a complaint proceeding under Section 13 of the Interstate Commerce Act to test the lawfulness of any rate under which his goods are moved instead of being permitted to make an abstract judicial challenge to a general revenue order. The critical distinction between the cases is that those objecting to the discontinuance of trains in the *City of Chicago* case had no remaining administrative remedy after the Commission terminated the proceeding; the shippers here have a wholly adequate remedy.

In a Section 13 proceeding a shipper would have the opportunity to raise and to preserve for judicial review any objection he might have to the general level of rates, the substantive findings that moved the Commission not to disapprove an increase to that level and the procedure that led to the order embodying those findings if such findings bore on his claim that the rate he was attacking was unlawful. In short, by prosecuting a complaint against a rate he considers unjust or unreasonable a shipper can obtain reparations

for past overcharges and relief for the future if the rate is unjust or unreasonable. The railroads, on the other hand, would have no way of recouping the loss of revenue they would suffer if, as an incident to a suit to set aside one of the Commission's general revenue orders, they were precluded from collecting the increased rates *pendente lite* and those rates were ultimately found to be reasonable.

The cases now before the Court are peculiarly inappropriate vehicles for re-examining the long-standing rule requiring exhaustion of remedies because the questions raised by the appellants concerning the merits of the Commission's general revenue proceeding and orders are unsubstantial.

I

For many years the Commission from time to time has conducted what have come to be called general revenue proceedings.[1] These proceedings are quite different from the typical Commission rate case, brought by complaint under Section 13 or by petition under Section 15(7) of the Interstate Commerce Act against one rate or a limited group of rates. In such a case any aspect of the legality of a rate may be in issue—its justness and reasonableness, whether it is unjustly discriminatory or unduly preferential or prejudicial or any other element of the lawfulness of a rate. Upon the record made, which is focused on the rate or rates at issue, the Commission, if it finds the rate published or proposed by the carrier unlawful, may order the rate canceled, make findings that

[1] The early cases are described in 3B Sharfman, The Interstate Commerce Commission 33-221 (1936).

lay the basis for claims of reparations for the past and prescribe or define the allowable level of future rates. Or if the Commission does not find the carrier's rate unlawful, it may simply terminate the proceeding. An order in such a case, whether it results in cancelation of a rate or simply in discontinuance of the proceeding, is of course reviewable in court. See *City of Chicago* v. *United States*, 396 U.S. 162, 166 n. 5 (1969).

A general revenue proceeding, on the other hand, does not definitely determine the lawfulness of any rate but rather amounts to a preliminary scrutiny of carrier-initiated increases of a broad range of rates. In the case with which we are concerned here, the range was the broadest possible, all freight rates in the country. In the period of generally rising prices the nation has experienced since the Commission obtained effective rate regulation power the usual general revenue proceeding has been prompted by what rail carriers throughout the country or in a rate territory have thought to be their immediate need for increased revenues to maintain themselves as an effective agency of transportation in the public interest. The issues are as described in Section 15a(2) of the Act, where the Commission is directed to consider the "need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and . . . the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service"; and also the effect on the movement of traffic of the rates under consideration.

What the Commission does, having received information and arguments calculated to illuminate the

question, is to make an informed judgment whether in the overall aggregate, or as applied to very broad categories of commodities, the rate increase proposed or published by the carriers will do more than merely satisfy the carriers' "need of revenues" to enable them to maintain adequate and efficient service and whether on some or all commodities the carriers may be pricing themselves out of the market. The Commission cannot practically and does not attempt to focus on particular rates and determine their lawfulness, even under the statutory standard of justness and reasonableness. It merely determines, in a preliminary way, whether it appears that the rate increases are justified within the policy of Section 15a(2) or whether, on the other hand, they are unreasonable and will yield excessive revenues for the carriers. This Court has recognized the practical necessities that compel the Commission to proceed as it does in general revenue cases. In *United States* v. *Louisiana*, 290 U.S. 70, 76-77 (1933), the Court said that

> "in performing the duty broadly to increase carrier revenue, it is enough if the Commission, in the first instance, makes such inquiry and investigation as would enable it to say that the prescribed increases when applied to members of the group will generally not exceed a reasonable maximum. The extent of this inquiry and the detail of investigation can not be marked by this Court with certainty. The size of the group dealt with, the nature of the traffic, the urgency of the relief demanded, these and other factors should condition the Commission's procedure in each case."

See also *New England Divisions Case*, 261 U.S. 184, 197-98 (1923).

The Commission in fact has used various forms of procedures in general revenue cases. There is almost

always a pressure of time, particularly so in a highly inflationary period like the present; if Commission proceedings run into several months—and even expeditious Commission proceedings may do so—continuing inflation will erode the expected benefits of any rate increase. In the proceeding that appellants attempt to bring here the Commission, as we have related, first granted the carriers permission to publish their rate increases in a form not specified in its tariff regulations and then suspended the rates to the extent that the increase exceeded 3 percent and subjected them to an evidentiary investigation. Sometimes the Commission has received data and heard arguments before deciding whether to exercise its power to suspend the effectiveness of a tariff. That was the procedure the Commission followed when the carriers published a rate increase subsequent to the increase appellants question here. *Increased Freight Rates, 1969*, ICC Order of Nov. 17, 1969 (Ex Parte No. 262). It was also the procedure followed by the Commission in the first of the cases in which a court held that a Commission order permitting carrier-initiated general rate increases to go into effect was not reviewable until administrative remedies had been exhausted.

The case is *Algoma Coal & Coke Co.* v. *United States*, 11 F. Supp. 487 (E.D. Va. 1935). That case is in many respects strikingly similar to this one. There, as in this case, the Commission had permitted railroads to put into effect selective increases in rates "to meet in part increased expenses of operation caused by an increased wage scale and rising cost of materials and supplies." 11 F. Supp. at 489. The Commission permitted the carriers to make certain rate increases, though not precisely those they had proposed. The

Commission made findings very much like those it made in the present case. It concluded that the rates permitted would not be in excess of just and reasonable rates and noted that the increased rates would be subject to complaint proceedings as provided by the Act and that reparations would be available if the rates ultimately were found to be unreasonable.[2] It entered orders granting special tariff-filing permission and relief under Section 4 and modifying existing rate orders.[3] 11 F. Supp. at 489-91.

A group of coal shippers brought suit to have the Commission's orders set aside. The three-judge court dismissed the complaint, reasoning that it would be

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[2] That is the purport of the Commission's statement below that "the increased freight rates and charges authorized herein are not considered as prescribed within the meaning of *Arizona Grocery Co.* v. *Atchison, T. & S.F. Ry. Co.*, 284 U.S. 380 . . . ." 332 I.C.C. at 792. If the Commission has prescribed a rate there can be no reparations for the period it was in effect, but if a carrier-initiated rate is found unjust or unreasonable there can be reparations. Sections 8 and 16 of the Act deal with reparations.

[3] The appellants in No. 1283 attempt to found reviewability on the § 4 relief and rate-order modification actions of the Commission here (Jur. St., No. 1283, p. 8). None of the appellants in the courts below attacked the Commission's order for the rate prescription and § 4 relief they granted. The issue whether those determinations are now reviewable is therefore not presented by the appeals. Further, if it were sought to make an attack upon the Commission's orders in this respect, the answer given by the three-judge court in the *Algoma* case is applicable. The court said that the two orders, modifying existing rate prescription orders and granting § 4 relief, "are of themselves purely incidental to the main purpose of the proceeding before the Commission. Furthermore, it is to be noted that it is not clearly shown by the plaintiffs that they suffer any injury by virtue of these particular orders, which were merely a means to an end." 11 F. Supp. at 492-93. Here the appellants have not even alleged injury as a result of these orders, much less shown it.

open to any shipper to complain to the Commission about any particular rate and to have a full adjudication of the legality thereof.[4] See also *Birmingham Slag Co.* v. *United States*, 11 F. Supp. 486 (N.D. Ala. 1935), dismissing a complaint directed to the same order that was involved in the *Algoma* case.

The *Algoma* decision has been followed in two other three-judge court cases prior to the current litigation relating to Ex Parte No. 259. These cases were decided after this Court's decision in *Rochester Tel. Corp.* v. *United States*, 307 U.S. 125 (1939), and after what is now 5 U.S.C. §§ 701, 702, 704, 706 (Section 10 of the Administrative Procedure Act), liberalizing judicial review, was enacted in 1947. Thus they cannot be explained as resting on some outmoded, restrictive view of the availability of judicial review. In one case the decision was affirmed on the jurisdictional papers by this Court. The cases are *Koppers Co.* v. *United States*, 132 F. Supp. 159 (W.D. Pa. 1955), and *Florida Citrus Comm'n* v. *United States*, 144 F. Supp. 517 (N.D. Fla. 1956), *aff'd per curiam*, 352 U.S. 1021

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[4] The court also noted that the principal action of the Commission was, as noted in the text above, to decline to suspend a carrier tariff. Of course, it is perfectly clear that such action of the Commission is not reviewable on any view of the law. See Long Island R.R. v. United States, 193 F. Supp. 795, 797-98 (S.D.N.Y. 1961); compare Arrow Transp. Co. v. United States, 372 U.S. 658 (1963). The appellants seek to capitalize on this distinction of the *Algoma* case from the present case. But in fact what the Commission did here is altogether like making a decision not to suspend. It made a preliminary determination that the published increases are not unreasonable, leaving any party who considers himself aggrieved the fully adequate remedy of a § 13 complaint, just as any such party is remitted to that remedy when the Commission declines to suspend a tariff and enter upon an investigation of the lawfulness of a rate. The difference in form of the two proceedings should not result in an order in one being reviewable and an order in the other not reviewable.

(1956). The court in the *Koppers* case, which involved another general revenue increase order, stated the rationale of this line of cases as well as it has been expressed.

> "It is not for this court to tinker with the delicate and fragile machinery of rate fixing and rate apportionment until the administrative process has been meticulously and stringently followed and exhausted in accordance with statutory requirement. The Commission must be afforded every available opportunity to utilize its vast reservoir of knowledge, experience, and knowhow —in a proceeding wherein an unequivocal compliance with Sections 13 and 15 has been made with a complaint filed and defendant or defendants served, and clear-cut adversary contests evaluated and conclusively ruled upon, before the arm of the court should intercede upon the merits."

Lately, in addition to the decisions below, a differently constituted three-judge court in the District of Columbia has followed *Algoma* in dismissing a complaint against the same order in Ex Parte No. 259, *Electronics Industries Ass'n* v. *United States*, D.D.C. Civil Action 1059-69, decided April 2, 1970. This means that in the last 35 years seven panels of district and circuit judges have held that general revenue increase decisions of the Commission cannot be reviewed until the Commission's processes for determining the lawfulness of rates have been fully pursued. Twenty judges have concurred in that holding, and only one has dissented. This Court summarily affirmed the one district-court judgment that until now has been brought to it.

II

The appellants rely upon the recent decision of this Court in *City of Chicago* v. *United States*, 396 U.S. 162 (1969). The appellants in No. 1083 go so far

as to urge that the unbroken line of decisions to which we have referred be disapproved and the judgments below reversed summarily merely on the basis of the *City of Chicago* case. (Jur. St., No. 1083, pp. 9-14).

The *City of Chicago* case does not cast any doubt on the decisions below, much less call for summary reversal.

In that case the Commission, pursuant to Section 13a(1) of the Act, conducted an investigation to determine whether certain railroads could discontinue certain passenger trains. The Commission determined that continued operation of the trains was not required by the public convenience and necessity and that such continued operation would unduly burden interstate commerce, the tests under Section 13a(1). The Commission then entered an order terminating its investigation. The district court dismissed a complaint against the Commission order on a theory that this court quite correctly described as "of the vintage we discarded in" *Rochester Tel. Corp.* v. *United States*, 307 U.S. 125 (1939). The theory was that, because the trains could be discontinued unless the Commission ordered to the contrary, only an order requiring continuance was reviewable. This Court reversed unanimously.

The position of these appellees in these cases, however, is not that the Commission's order is unreviewable because it is permissive or negative in form. One does not need the *City of Chicago* decision to know that such a position is not tenable today. The position of the railroads, rather, is that in the circumstances of a general revenue proceeding, which set it off from any other Commission proceeding, review of a Commission decision permitting a rate increase should not be had

on the complaint of a shipper until that shipper has pursued the thoroughly adequate statutory remedy provided with respect to any rate by which he is actually affected. The persons objecting to the discontinuance of the trains in the *City of Chicago* case, on the other hand, had no further administrative remedy after the Commission's discontinuance proceeding was terminated.

The effectiveness of the shipper's Section 13 complaint remedy is not at all dependent on his having review of the general revenue order. In short, the basis of the *Algoma* line of decisions is that there is no need to review an order of the Commission entered in a general revenue proceeding, which is based on quite preliminary and general findings and which determines the lawfulness of no rate or group of rates. There is no need for such review because the statute gives a shipper an efficacious remedy whereby he can obtain a Commission determination, which will be subject to judicial review, of the lawfulness of the particular rate or rates on which his commodity moves. This remedy protects the shipper against the only consequence of the Commission's general revenue order that has any direct and substantial effect upon his legal interests.

III

The appellants contend that the remedy of a Section 13 complaint proceeding is inadequate. That contention is a major part of the foundation for their argument that they are now entitled to review of the Commission's orders in the general revenue proceeding. For the most part the contention is buttressed by nothing more than rhetorical assertion, *e.g.*, "to require the plaintiffs to proceed before the Commis-

sion pursuant to Section 13 amounts to denying them any effective relief." (Jur. St., No. 1083, p. 12). Such substantiation as the appellants attempt relates mainly to their fear that the Commission's general revenue orders and the findings underlying them would be conclusive of issues that they might attempt to raise concerning rates that affect them in Section 13 proceedings. There is no warrant for any such fear since it is patent that in a Section 13 proceeding anything relevant to the lawfulness of the rate at issue may be shown.

The Commission has never held that inquiry into the extent of carrier revenue need or anything else decided in a general revenue case was barred in a Section 13 case. The same criteria of Section 15a(2) are the guides to decision concerning reasonableness of rates both in a general revenue case and a complaint case so that such a holding would be impossible to square with the Commission's governing statute. There is a passage in *Koppers Co.* v. *Chesapeake & O. Ry.*, 303 I.C.C. 383, 387 (1958), that is quoted by appellants as if it were such a holding. (Jur. Sts., No. 1083, p. 16; No. 1283, p. 11). The passage is murky, but nothing in the Commission's language indicates that the shipper-complainant was precluded by the general revenue order from showing that the assailed rates for his traffic were unlawful. Certainly there are cases in which the Commission, considering one rate or a limited number of rates, has looked to costs and revenue need, which is the central issue in any general revenue proceeding.[5]

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[5] *E.g.*, Baltimore & O.R.R. v. Chicago & E.I.R.R., 318 I.C.C. 771, 776-77 (1963), *rev'd on reconsideration*, 322 I.C.C. 572, 576-77 (1964); Rochester & Pittsburgh Coal Co. v. Baltimore & O.R.R., 294 I.C.C. 423, 433-34 (1955); Avera Packing Co. v. Atlantic Coast Line R.R., 296 I.C.C. 17, 19-20 (1955).

In any event, there is no reason to doubt that, if in a Section 13 case the Commission were to rely upon a general revenue order or the revenue need findings therein, a shipper would be able to assert that the order, the findings or the proceedings leading to the order were flawed in any of the ways the appellants allege. The question for the Commission would be whether there was indeed any such error as was claimed, and whether the error vitiated the proceeding.

On review of a Commission order in a Section 13 case ruling against a shipper's claims of error in a general revenue increase order and relying upon the order, there would be two possibilities. One is review of the Commission's decision as to the errors claimed, which would be according to traditional standards of judicial review. The other possibility is that a court would hold that the Commission could not rely at all upon the unreviewable general revenue order when carrier revenue needs were brought in question as a part of a subsequent Section 13 rate case, even in the absence of any substantiated claim of prejudicial error in the proceedings leading to that order.

The district court in No. 1083 stated what we regard as the correct rule:

> "We see no reason why, upon making a proper record before the Commission in a Section 13 proceeding, plaintiffs cannot preserve the objections which they now assert to the procedure leading up to the general revenue order. We believe that an adverse ruling of the Commission on these objections should be reviewable by a court upon its review of the Commission's final order in the Section 13 proceeding." (Jur. St., No. 1083, p. 13a).

Thus, ultimately the general revenue order and findings cannot bar a shipper from raising in litigation over any rate by which it is affected any issue relevant to the reasonableness of the rate. If the shipper prevailed and the rate were found unreasonable, it would be canceled and a reasonable rate substituted for the future. Further, the shipper would have a basis for claiming reparations for the period in which it was made to pay the unreasonable rate in the past. That is the extent of any shipper's legitimate interest.

By contrast, the railroads would have no recourse if, in connection with a Court review of a general revenue order, they were prohibited from collecting rates ultimately found reasonable in the review proceeding after months or years had passed. While there is doubt that a court has power to enter an interlocutory order of that sort, *cf. Arrow Transp. Co.* v. *Southern Ry.*, 372 U.S. 658 (1963), the practices of the district courts have not been uniform, and suits to set aside Commission orders can be brought in many courts throughout the country. For this reason and because of the magnitude of what is at stake, the concern of the railroads about the possibility of interlocutory relief is a very real concern. No judicial remedy is available to them by which they can order the upward spiral of wages and material costs halted. The proceedings before the Commission necessarily consume some time after the carriers determine that a rate increase is needed to provide them with the revenues necessary to maintain adequate service in the public interest. Necessarily the revenues forgone during the period of Commission deliberation cannot be recaptured. No more could revenues forgone as a result of a *pendente lite* judicial order entered in a pro-

ceeding to review a general revenue order. And meanwhile the inflationary spiral continues, rendering inadequate for the future the rate increase not realized in the past.

IV

There is no substance to appellants' claims of error in the Commission's orders or the proceedings leading to them. If the Court were to note probable jurisdiction these appellees would urge as an alternative ground for affirming the district courts' judgments that the Commission's order should be sustained on its merits and the complaints dismissed for that reason. Some of the claims are trivial, such as the complaint that the Commission's staff did not participate in the proceeding. (Jur. St., No. 1083, pp. 4, 22). Others are plainly extravagant, such as the claim of the appellants in No. 1083 that the Commission's findings concerning justness and reasonableness had no evidentiary support. (*Id.*, pp. 4, 21). None has any merit. We shall not argue the point now beyond the following comments:

For the conduct of Ex Parte No. 259 the Commission established procedures that were designed to give it the benefit of all the data and arguments pertinent to the preliminary, general findings appropriate to a general revenue proceeding. Hearing examiners took evidence on behalf of the Commission, which received briefs from the parties. It issued two long reports and orders, the first vacating its previously ordered suspension (which itself followed the receipt of written data and legal contentions and oral argument) and a subsequent, more complete report, approving most of the increases sought and formallly granting the needed modification of outstanding orders.

The Commission made findings concerning the carriers' revenue needs and other issues in the proceeding as definitive and detailed as the preliminary nature of the proceeding required. Some of its findings we have quoted or paraphrased in our statement of the case. Those findings and the others made by the Commission, all based on substantial evidence, led inevitably to the conclusion that the rate increases the Commission allowed would not result, overall, in rates that exceeded the standard of justness and reasonableness. So far as revenue needs were concerned, the Commission, while noting the railroads' dismal rate of return, found that the increases were needed just to help the carriers to meet their operating costs and would only partially offset increases in such costs. (P. 3, *supra*). In these circumstances there is no conceivable merit to the major contention of the appellants in No. 1283, that the Commission should have made detailed findings concerning the amount of the carriers' financial needs, their investment requirements and the like. (Jur. St., No. 1283, p. 5 & n.1). *Cf. Chicago & North Western Ry.* v. *Atchison, T. & S. F. Ry.*, 387 U.S. 326, 343-48 (1967).

CONCLUSION

The judgments of the district courts should be affirmed.

Respectfully submitted,

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May 1970